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October 7, 1991

The Honorable Dan Morales  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

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Opinion Committee

Dear Mr. Morales:

I write to request your assistance in construing language in the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) ("the Act") that relates to the distribution and use of money by the Texas Greyhound Association ("TGA"). In H.B. 2263, enacted during the Regular Session of the 72nd Legislature, the Texas Greyhound Association was designated as the official breed registry for greyhounds. See §10.05 of the Act.

Pursuant to §6.09 of the Texas Racing Act, the official breed registry for greyhounds receives one-half of the breakage from the dollars wagered at pari-mutuel greyhound racetracks and the Texas Racing Commission receives the other half. The breakage is a portion of the money wagered by the patrons at the racetracks. Because pari-mutuel pools are divided among the winning wagerers in increments of 10¢, the odd cents left over after dividing the pools in 10¢ increments constitute the breakage. During FY 91, the breakage generated by the two greyhound racetracks operating in Corpus Christi and Harlingen was \$364,550. When the racetrack in Galveston County begins operations, the breakage is estimated to be approximately \$1,026,900 per year.

Subsection (d) of §6.09 reads as follows:

(d) Fifty percent of the breakage is to be paid to the appropriate state greyhound breeding registry. Of that portion of the breakage 25 percent of that breakage is to be used in stakes races and 25 percent of that total breakage from a live pari-mutuel pool or a simulcast pari-mutuel pool is to be paid to the commission for the use by the state greyhound breed registry, subject to rules promulgated by the commission.

H.B. 2263 also amended §6.09 and added §10.05 that created an inconsistency. Sec. 10.05 provides, in pertinent part: "An association shall pay the breakage due the breed registry to the appropriate state greyhound breed registry at least every 30 days."

My questions are these:

1. Is the Texas Greyhound Association authorized to use one-half of its share of the breakage (i.e. one-fourth of the total breakage generated at the greyhound racetracks) in any way it chooses, without supervision by the Commission?

2. Is the Texas Racing Commission authorized or required to adopt rules that provide guidelines for the use of any or all of the breakage paid to the Texas Greyhound

Association, such as a percentage limit on administrative costs or a percentage allocation for races limited to accredited Texas-bred greyhounds?

### **Discussion**

Pursuant to §6.09(c) of the Act, one-half of the breakage goes to the Texas Racing Commission for its regulatory purposes. Subsection (d) provides that one-half of the breakage is paid to the TGA; 25% of "that breakage" is dedicated to stakes races and 25% of "that total breakage" is to be paid to the Commission for use by TGA, subject to Commission rules. Are the 25% portions based on the total breakage or the TGA share? Is there an additional one-fourth of the total breakage completely unaccounted for? If this is so, then is three-fourths of the TGA allotment of breakage completely undedicated to any particular purpose, to be used by TGA in any manner it sees fit? In the opinion of the Commission's legal counsel, this is inconsistent with the purposes of the Act and with the Act when read as a whole.

Section 1.02 of the Act declares as one of its purposes "to encourage ... the greyhound-breeding industry". Because the breakage is a portion of the money wagered by the patrons at the greyhound racetracks, the breakage takes on a "quasi-public" nature. The breakage generated at horse racetracks is completely dedicated to purposes that assist and encourage the horse-breeding industries. See §6.08 of the Act. Two percent of the breakage is dedicated to the equine research account, established by H.B. 2263. The remaining breakage (called the "total breakage" for purposes of further allocation) is distributed as follows:

- 10% to the appropriate state breed registry for administrative costs;
- 10% to the association to fund stakes races restricted to Texas-bred horses;
- 40% to the owners of accredited Texas-bred horses that finish first, second, or third;
- 40% to the breeders of accredited Texas-bred horses that finish first, second, or third; and
- 20% to the owners of stallions standing in Texas at the time of conception whose Texas-bred progeny finish first, second, or third.

H.B. 2263 deleted language from §6.09(d) that dedicated a portion of the TGA's breakage to administration and accredited Texas-bred races. The question is whether the deletion of that language permits the TGA unfettered discretion over the use of its share or whether the Commission can adopt rules to dedicate the funds to purposes consistent with the purposes of the Act. It appears clear that TGA's portion of the breakage, by being dedicated to the official breed registry, should be used to encourage the greyhound breeding industry.

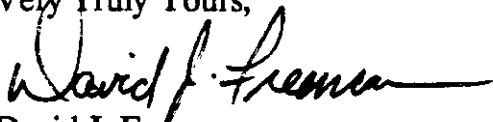
A further question is whether the references to "25%" are with respect to the total breakage or to the TGA share of the breakage. In my opinion, the reference is to the total breakage, including the Commission's share. As indicated above, the Act clearly dedicates every portion of the breakage from horse racetracks for particular purposes. Additionally, in §§6.08 and 6.091, the "takeout" from the pari-mutuel pools at horse racetracks is clearly allocated among the association, the purses, and the State Treasury. Similarly, in §§6.09 and 6.11, the "takeout" from the pari-mutuel pools at greyhound racetracks is allocated among the association, the purses, and the State Treasury. In these instances, all portions of the wagered dollar are accounted for and dedicated to some purpose. It seems highly unlikely that, while carefully allocating all portions of the takeout and the breakage for

horse racetracks, the Legislature would have failed to dedicate over a quarter of a million dollars per year of breakage at the greyhound racetracks.

Clearly, the references in §6.09(d) to 25% of the breakage were intended to refer to the total breakage, not just to TGA's share of the breakage. To conclude otherwise leaves a gap in the distribution plan for pari-mutuel dollars. To permit an official breed registry to use a substantial portion of this "quasi-public" money completely without regulation or supervision by the Commission could result in the use of the funds in a manner inconsistent with the purposes of the Act and a loss of public trust in the integrity of the greyhound racing industry. By adding the language in §6.09 that permits the Commission to adopt rules regarding the greyhound breakage, the Legislature must have intended some type of supervision to ensure the purposes of the Act are furthered.

I respectfully request your assistance in the resolution of these issues. If you or any member of your staff needs additional information, please call me or Paula Cochran Carter, General Counsel for the Commission, at 794-8461.

Very Truly Yours,



David J. Freeman  
Executive Secretary

DJF/pcc:ng

c: Texas Racing Commission  
Texas Greyhound Association  
Corpus Christi Greyhound Racing Associates  
Gulf Greyhound Partners, Ltd.  
Valley Racing Association